

# Case Studies

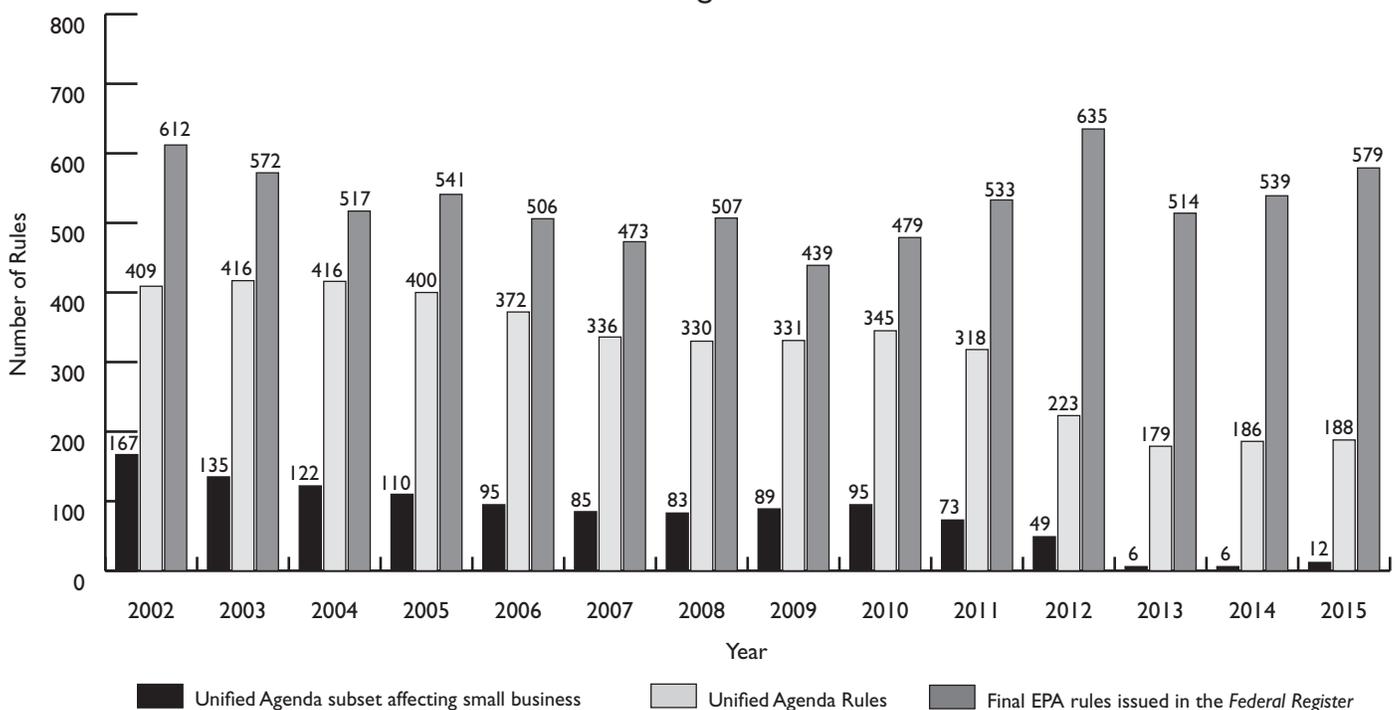
## Regulation and the Environmental Protection Agency

It has been nearly six years since Rep. Darrell Issa (R-Calif.), as then-chairman of the House Oversight and Government Reform Committee, issued a request to businesses, trade associations, and think tanks seeking input on which federal rules they regarded most burdensome. He received more than 160 responses brimming with recommendations (including from the Competitive

Enterprise Institute<sup>90</sup>), and his office issued a summary report.<sup>91</sup> The Environmental Protection Agency accounted for the lion's share of the regulatory burden felt by private enterprise.

EPA rules finalized in the *Federal Register* had been rising during the first term of the Obama administration, eventually topping levels last seen in 2002 (see third bars in Figure 23). The Bush trend had been downward, whereas Obama's counts rose sharply, decreased, and have since headed back up-

Figure 23. Number of EPA Rules in the Unified Agenda and *Federal Register*, 2002–2015



Source: Compiled from “The Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions,” *Federal Register*, various years’ editions; from online edition at <http://www.reginfo.gov>; and from [FederalRegister.gov](http://FederalRegister.gov).

## Box 2. Dropoff in Active, Completed, and Long-Term EPA Rules in the Unified Agenda

	<b>Total</b>	<b>Active</b>	<b>Completed</b>	<b>Long Term</b>
2011	318	175	82	61
2012	223	117	71	35
2013	179	134	21	24

ward. Under Obama, finalized EPA rules rose from 439 to 635 between 2009 and 2012—a 45 percent increase—before dropping 19 percent to 514 in 2013. Between 2013 and 2015, the count rose 12.6 percent to 579.

Note the Unified Agenda count and the just-noted actual rule count suspiciously diverging. There has been a substantial drop-off in the Agenda-listed rules issued by EPA over the past few years compared with the higher levels of EPA rules finalized in the *Federal Register*, as seen in Figure 23. The past three years' Agenda counts have been interesting, because the EPA did not appear among the top five rule-making agencies in the Unified Agenda pipeline (it is again sixth with 188 rules; see Table 6). In the past two years, the EPA rules in the Unified Agenda pipeline did rise slightly, from 179 to 188, but they had otherwise been dropping since 2010, to 179 in 2013, which was the lowest level of the decade. As of April 26, 2016, the EPA had finalized 139 rules in the *Federal Register*.

The agency also no longer ranks among the agencies with the most rules in the Unified Agenda that affect small business. Note, also in Figure 23, the implausible 88 percent drop from 49 rules affecting small business in 2012 to only six in both 2013 and 2014, and then 12 in 2015.

Where did all the EPA's Agenda rules go? Box 2 shows a breakdown of the agency's 2011-2013 Unified Agenda-listed rules by stage of completion. One can see that chunks of the

EPA's active, completed, and long-term rules simply vanished during that interval. Such a drop-off does not square with the level of regulatory impact driven by the EPA, but can be partly explained by the earlier discussion of rule delays and the Sunstein and Shelanski memoranda and their possible effect on reporting policy in the Unified Agenda. Recall too that only one Agenda, not the required two, appeared in 2012.

The EPA is not likely to roll back regulatory pursuits, as may be inferred from the Obama administration's public statements about acting on energy and environmental policy unilaterally. Many noteworthy rules were listed earlier in this report in "Notable Regulations by Agency." An October 2012 Senate Minority Report from Sen. James Inhofe (R-Okla.), then-ranking member of the Senate Committee on Environment and Public Works, detailed what it called "Numerous Obama-EPA Rules Placed on Hold until after the Election."<sup>92</sup> Those rules include the following:

- Greenhouse gas regulations
- Ozone rule
- Hydraulic fracturing rule
- Florida numeric nutrient criteria (water quality rules)
- Guidance documents for waters covered by the Clean Water Act
- Stormwater regulation
- Tier 3 gas regulations
- Maximum achievable control technologies rules for industrial boilers and for cement

- Power plant cooling towers rule
- Coal ash rule
- Farm dust regulations
- Spill prevention control and counter-measure rule

Various years' editions of the Office of Management and Budget's *Report to Congress on the Benefits and Costs of Federal Regulations* attest to the EPA's status as one of the more costly regulators. For example, the 2013 draft report had presented a range of total costs of \$14.8 billion to \$19.5 billion added during the fiscal year for the four rules for

which quantified cost-benefit analysis occurred. Well over half was attributable to the EPA: \$8.3 billion to the agency exclusively and another \$5.3 billion to \$8.8 billion to the EPA and Department of Transportation's fuel economy standards.<sup>93</sup> In the 2015 report, 13 rules were claimed to cost only \$3.0 to \$4.4 billion, but EPA rules accounted for \$1.6 billion, likely at least half. Overall, this author's survey of available information yields an estimate of the annual impact of EPA rules at \$386 billion, or 2.1 percent of GDP.<sup>94</sup> That amount is still less than the 2.4 percent of GDP the EPA once anticipated.<sup>95</sup>